without the buyer's actual assent; and that by his dissent he has the power to divest that title *ab initio*. Rescission for fraud or breach of warranty has this effect only from the time of its occurrence.[10] But there is an analogy in the case of gifts delivered to a third person, or to a trustee, where the assent of the donee or *cestui que trust* has always been "presumed." [11] An early English case first extended the doctrine to creditors,[12] and, in spite of subsequent disapproval by English judges,[13] it was followed in New York.[14] The same result was reached independently from the same analogy by the Supreme Court of the United States in 1850.[15] In a similar line of cases the principle does not seem to have been considered,[16] and the infrequency of its application makes its validity doubtful. There is a radical difference between a donee and a creditor, for, whereas the former gives up nothing and the possibility of his dissenting may safely be disregarded, a creditor must surrender his debt. At the moment of shipment there is about as little reason to presume assent by a creditor as by an ordinary contractor. The result would be practically the same if the relation back of assent is allowed to oust the rights of attaching creditors, and in both cases the reasons for the result are those above referred to. As an original question, presumption of assent might be more convenient; but it is now impossible to establish it in the case of ordinary contractors, and there seems no valid line of distinction.

THE RIGHT OF HUSBAND TO SUE WIFE FOR ALIMONY. — Not only are virtually all the definitions of alimony that appear in the books limited in their terms to an allowance proceeding from the husband to the wife,[1] but it has frequently been expressly decided that the law does not recognize a right in the husband to alimony.[2] The property which equity in granting a divorce allows a husband on the ground that, although title to it is in the wife, it has been derived through the husband under circumstances which make it inequitable for the wife to retain it,[3] is sometimes incorrectly referred to as alimony. On principle, however, it is

[10] Thompson *v.* Conover, 32 N. J. L. 466. *Cf.* Hotchkiss *v.* Higgins, 52 Conn. 205.

[11] Davis *v.* Ney, 125 Mass. 590; Doe *v.* Knight, 5 B. & C. 671. *Cf.* Goss *v.* Singleton, 2 Head (Tenn.) 67, 77.

[12] Atkin *v.* Barwick, 1 Str. 165. *Cf.* Smith *v.* Field, 5 T. R. 402.

[13] See Neate *v.* Ball, 2 East 117, 124; Alderson *v.* Temple, 4 Burr. 2235, 2239.

[14] Brown *v.* Bowe, 35 Hun (N. Y.) 488; Sturtevant *v.* Orser, 24 N. Y. 538. *Cf.* Berly *v.* Taylor, 5 Hill (N. Y.) 577.

[15] See Grove *v.* Brien, 8 How. (U. S.) 429, 440. *Cf.* Tompkins *v.* Wheeler, 16 Pet. (U. S.) 106; Brooks *v.* Marbury, 11 Wheat. (U. S.) 78.

[16] Walter *v.* Ross, 2 Wash. C. C. (U. S.) 283; Bailey *v.* Hudson River R. Co., 49 N. Y. 70; Straus *v.* Wessel, 30 Oh. St. 211. These cases, although they treat a factor under advances as a vendee, refuse to do so unless he has ordered the consignment.

[1] See Martin *v.* Martin, 65 Ia. 255, 256, 21 N. W. 595, 596; 1 BISHOP, MARRIAGE, DIVORCE AND SEPARATION, § 1386; GODOLPHIN, ABR. ECCL. LAWS, 508.

[2] Somers *v.* Somers, 39 Kan. 132, 17 Pac. 841; Groth *v.* Groth, 69 Ill. App. 68. In some jurisdictions, by statute, a husband may obtain alimony. See R. I. GEN. LAWS, 1909, c. 247, § 8; 1 PELL'S REVISAL OF N. C., 1908, c. 31, § 1565.

[3] Meldrum *v.* Meldrum, 15 Colo. 478, 24 Pac. 1083. See note to Greene *v.* Greene, 4 L. R. A. 110.

wholly distinct from alimony technically so called as a support out of the wife's property.

Of recent years it has been thought that a tendency could be observed, resulting from the passage of the numerous statutes removing the common-law disabilities of married women, to place the wife and husband on an equality as regards this question.[4] The first decision, however, in a court of last resort which manifests such a tendency, appears to be a recent North Dakota case, in which it was held that a husband, indigent and unable to earn a livelihood for himself, might recover alimony in a separate suit entirely apart from divorce proceedings.[5] *Hagert* v. *Hagert*, 133 N. W. 1035 (N. D.). Although the court rested its decision in part on a statute which entitled the husband to support from his wife under such circumstances,[6] it clearly indicates that it does not regard the statute as essential to its decision.

The argument of the court, amplified in the light of other cases in which the same question has been litigated,[7] would seem to be: (1) the wife's right to alimony is based on her right to support from her husband,[8] which in turn was based at common law on the fact that her husband was vested with all her property immediately available for support, and entitled to her services; (2) inasmuch as the enabling statutes have removed the reason for the wife's right to support, the right itself should cease; (3) since that right, however, is too well established to be abolished, justice requires that a corresponding right be given to the husband under certain circumstances. This line of reasoning, it is submitted, cannot be sustained. In the first place, there would seem to be a deeper reason than that suggested for the wife's right to support from her husband, namely, the fact that the woman is in the nature of things dependent on the man. That this is recognized even to-day, despite the enabling statutes, is apparent from the presence on many statute-books of laws imposing criminal penalties on a husband for desertion, and the absence of any such statute relating to wives.[9] Moreover, even should it be admitted that the reason for the wife's right to support had ceased, it would seem that the denial of the husband's right to support is quite as well settled as the recognition of the wife's right to it,[10] and hence the argument proves only that the right should be denied the wife.[11] Finally, even

[4] See note to Greene *v.* Greene, 34 L. R. A. 110; 1 BISHOP, MARRIAGE, DIVORCE AND SEPARATION, § 1387.

[5] On the question whether in the absence of statute a wife can bring a suit for alimony apart from divorce proceedings, there is a conflict of authority. The better view seems to sustain such an action. Daniels *v.* Daniels, 9 Colo. 133, 10 Pac. 657. See SCHOULER, HUSBAND AND WIFE, § 485. *Contra*, Clarke *v.* Burke, 65 Wis. 359, 27 N. W. 22. See 1 BISHOP, MARRIAGE, DIVORCE AND SEPARATION, § 1388.

[6] If there is such a statute, the husband, it has been held, can enforce the right it gives him by a decree for alimony. Livingston *v.* Superior Court of Los Angeles County, 117 Cal. 633, 49 Pac. 836. In view of this, the decision, at least, in Hagert *v.* Hagert, 133 N. W. 1035 (N. D.), would seem to be correct.

[7] See especially opinion in Groth *v.* Groth, 28 Chic. Leg. N. 348, reversed in 69 Ill. App. 68. For a comment on the decision in the lower court see 10 HARV. L. REV. 177.

[8] See Harris *v.* Harris, 31 Grat. (Va.) 13, 17.

[9] See 2 PELL'S REVISAL OF N. C., 1908, c. 81, § 3355; 1 COBBEY, NEB. ANN. STAT., 1909, § 2381.

[10] See Greene *v.* Greene, 49 Neb. 546, 552, 68 N. W. 947, 949; Somers *v.* Somers, 39 Kan. 132, 136, 17 Pac. 841, 846.

[11] So it has been held that, in view of modern statutes permitting married women to

though the denial of the husband's right were not equally well settled, it is plain that the step which, it is claimed, is required by justice is not a new application of an existing common-law principle, but the creation of a new principle. Such a step would be better taken by statute and not accomplished by sheer judicial legislation.[12]

RECENT CASES.

ATTORNEYS — RELATION BETWEEN ATTORNEY AND CLIENT — ATTORNEY'S CONSENT TO HEARING BEFORE LESS THAN FULL COURT. — A statute provided that every appeal to a certain court should, when the subject-matter was a final order, be heard before not less than three judges, unless all parties filed a consent to its being heard before two judges. The parties themselves not being present in court when such an appeal was called, their counsel filed a written consent that the appeal should be heard before the two judges present. *Held*, that the two judges may hear the appeal. *Haworth* v. *Pilbrow*, [1912] Wkly. Notes 6 (Eng., C. A., Dec. 12, 1911).

An attorney has been said to be the general agent of the client in all matters which may reasonably be expected to arise for decision in the cause. See *Prestwich* v. *Poley*, 18 C. B. N. S. 806, 816. He has complete authority over the suit, the mode of conducting it, and all that is incident to it, though not over collateral matters. See *Swinfen* v. *Lord Chelmsford*, 5 H. & N. 890, 922. It is well settled that an attorney has the power to consent to a reference of the cause to arbitrators without special authority from his client. *Filmer* v. *Delber*, 3 Taunt. 486; *Brooks* v. *New Durham*, 55 N. H. 559. Cases of this class rest upon the principle that authority to prosecute a suit implies a power to adopt any mode of prosecution which the law provides. *Buckland* v. *Conway*, 16 Mass. 395; *Smith* v. *Bossard*, 2 McCord Eq. (S. C.) 406. The principal case seems within this rule. The statute, as amended, made legal the trial of a final appeal before two judges. STAT. 38 & 39 VICT. c. 77, § 12; STAT. 62 & 63 VICT. c. 6, § 1. Hence the consent of the attorney to this mode of trial is within his implied powers and in such a case is the consent of the client himself.

BANKS AND BANKING — DEPOSITS — SPECIAL DEPOSIT OF CHECK AS COLLATERAL SECURITY. — A bank discounted notes for the plaintiff and took from him as collateral security a check for $2000, charging his account with $2000. The bank suspended payment. The notes were duly paid. The plaintiff sued to recover the $2000 left as collateral security. *Held*, that he must share as a general creditor. *Richardson* v. *Cheney*, 146 N. Y. App. Div. 686, 131 N. Y. Supp. 594.

When a bank discounts notes, and extends credit for their value, it is a simple debtor. *Carstairs* v. *Bates*, 3 Campb. 301. The ordinary relation of banker to depositor is that of debtor. *Marine Bank* v. *Fulton Bank*, 2 Wall. (U. S.) 252. If the depositor agrees not to use part of his credit, the banker remains no less a debtor. But if the collateral security is deposited to be returned *in specie*, the transaction constitutes a bailment. *Jenkins* v. *National Village Bank*,

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hold property and depriving the husband of his right to her services, the husband is no longer liable for debts of his wife contracted before marriage. Howarth *v.* Warmser, 58 Ill. 48.

[12] See 2 BISHOP, MARRIAGE AND DIVORCE, 5 ed., § 469.